

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1671 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy of the judgment ?
- 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
- 5 Whether it is to be circulated to the civil judge ?

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STERLING CENTRE PREMISES OWNERS CO.OP.SOCIETIES LTD. -

Versus

NANUBHAI R SHAH - PROP. OF DASH PUBLICITY AND ANOTHER

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Appearance :

MR SP HASURKAR for the applicant.

NOTICE SERVED for Opponent(s) : 1,

MR MIHIR H JOSHI for the opponent No. 2

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/03/2006

ORAL JUDGMENT

By filing this Revision Application under Section 115 of the Civil Procedure Code, original defendant no.2 has challenged the order passed by the 2nd Joint Civil Judge (Senior Division), Vadodara below Exhibit 26 in Regular Civil Suit No.160 of 1997.

The respondent herein is the original plaintiff of the aforesaid suit. The said suit was filed for a declaration and injunction on the ground that an agreement was entered into between the plaintiff, who was doing advertising business, and original defendant No.2 (the petitioner herein) to allot some place for placing the advertisement hoardings in the premises of defendant no.2 for which, according to the plaintiff, a considerable amount was also paid. According to the plaintiff, in spite of the fact that the agreement was executed between them, defendant no.2 is not allowing the plaintiff to place such hoardings. Plaint of the suit is annexed with this revision application at page – 1. In the prayer clause of the plaint, the plaintiff has sought for declaration and injunction. A declaration is sought for in the suit to the effect that defendant has no right to remove or damage the hoarding or board displayed by the plaintiff at the site and permanent injunction to that effect is also sought for. In the said suit, an injunction was sought to the effect that defendant no.2 – society be restrained from removing the hoardings placed by the plaintiff.

In the aforesaid suit, an application Exhibit 26 was filed by defendant No. 2 - Society, on the ground that defendant No.2 being a Co-Operative Society, the suit against it is not maintainable as it has been instituted without giving a statutory notice as required by section 167 of the Gujarat Cooperative Societies Act, 1961 [hereinafter referred to as

the Act]. It was also prayed in the application that the plaint may be rejected under Order 7 Rule 11(a)(d) of the Civil Procedure Code. It was also averred in the application that the suit is not maintainable as per the provisions of section 58 of the Indian Contract Act. It was, therefore, prayed that the plaint is required to be rejected on the aforesaid grounds.

The learned trial Judge, by her impugned order dated 10.09.1997, came to the conclusion that the plaintiff being a third party, is not required to serve any notice under Section 167 of the Act before institution of such suit. The observations of the learned trial Judge in this connection are as under:-

“Going through the facts of this case exh.1 reply of the defendant and also the documents produced by both of the parties, in this case, the plaintiff is a Dash publicity proprietor Nanubhai R. Shah and the defendant is Sterling Centre Cooperative Society Limited. As per the facts of this case, the plaintiff is a third party and is not a member of the Sterling Centre Cooperative Housing Society and the contract is between the plaintiff and defendant Sterling Cooperative Hsg. Society, and the plaintiff is a third party and he has nothing to do with the internal business of the Cooperative Society of the defendant. As per Sec.97 of the Cooperative Society Act, the dispute which is mentioned in the plaint does not come within the purview of Sec.97 of the Cooperative Societies Act, 1961 which should be referred to the Registrar under Section 96 of the Gujarat Cooperative Societies Act 1961. Therefore, in my opinion mandatory notice under section 167 of the Gujarat

Cooperative Societies Act 1967 is not necessary to be given to the Registrar in this case because the plaintiff of this case is a third party and he has filed this suit against the defendant Cooperative Society. Further Sec.166 is also not applicable in this case, therefore, the application of the defendant no.2 which he has filed under O.7 R.11(a)(d) is liable to be dismissed with costs.”

Heard learned advocates appearing in the matter and perused the order. In my view, the learned trial Judge has exhibited total non-application of mind while passing the impugned order. So far as filing of suit against a cooperative society is concerned, Section 167 of the Act provides as under:-

“167. Notice necessary in suits:-

Save as otherwise provided in this Act, no suit shall be instituted against a society, or any of its officers in respect of any act touching the business of the society, until the expiration of two months next after notice in writing has been delivered to the Registrar or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims, and the plaint shall contain a statement that such notice has been so delivered or left.”

It is required to be noted that if any suit is filed against a Co-Operative Society in respect of any act touching the business of the Society, such suit is not maintainable without a statutory notice. It is not the requirement of section 167 that if a third party, who is not a member of the Society, institutes a suit, he is not required to give such notice.

The learned Judge has confused the issue by referring to sections 96 and 97 of the Act. Those sections have nothing to do with the suit filed by the plaintiff against defendant No.2. It is irrelevant whether the plaintiff is a member of the Society or a third party. So far as section 96 of the Act is concerned, the same deals with a dispute which is required to be referred to the Nominee of the Registrar. The learned trial Judge has completely misread the provisions of section 167 of the Act, and on an erroneous ground, has rejected the application, and while doing so, has committed an error of jurisdiction in passing the impugned order. If a suit is instituted before a civil court against a co-operative society touching the business of the Society, then notice under section 167 of the Act is mandatory. Whether the plaintiff is a third party or not is absolutely irrelevant.

Since the order passed by the learned trial Judge is based on a total misconception of law, this Revision Application is required to be allowed, and is allowed. The matter is remanded to the trial Court for re-consideration of the application filed by defendant No.2 at Exh. 26. The learned trial Judge shall now decide the application afresh in the light of the observations made hereinabove. While deciding the application, the trial Court shall consider whether the dispute raised in the plaint touches the business of the Society, and after considering the aforesaid aspect, the learned trial Judge shall take a fresh decision in accordance with law. The learned trial Judge is directed to decide application at Exh. 26 within a period of three months from the date of receipt of writ the from this Court.

The Revision Application is accordingly allowed. Rule is made

absolute, with no order as to costs.

mathew

[P. B. MAJMUDAR, J.]